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COMMISSION ON JUDICIAL PERFORMANCE  
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**REPORT CONCERNING ADOPTION ON MAY 13, 2015  
OF AMENDMENTS TO RULES OF THE  
COMMISSION ON JUDICIAL PERFORMANCE**

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Pursuant to its rulemaking authority under article VI, section 18, subdivision (i) of the California Constitution, on November 4, 2014, the Commission on Judicial Performance circulated for public comments proposals for changes to certain of its rules. Following consideration of the comments received, the commission adopted proposed rule amendments with modifications, effective May 13, 2015, as summarized below. The text of the amendments is attached and the final version of the amended rules may be found on the commission's website at <http://cjp.ca.gov>.

**I. EXPLANATION OF AMENDMENTS**

**A. Introduction and Summary**

Commission rule 102 pertains to confidentiality and disclosure in commission proceedings. It currently provides exceptions to confidentiality, including for disclosure of information to prosecuting authorities, the Fair Political Practices Commission (FPPC) and the State Bar (upon resignation or retirement). Subsections (k) and (p) of rule 102 were amended to give the commission discretion to release to a federal, state or local regulatory agency information that a judicial officer or former judicial officer has violated a law or regulation within the agency's jurisdiction, under specified circumstances. A number of modifications were made to the proposed amendments after consideration of the comments received.

**B. Comments**

The commission received four comments in response to the invitation to comment.

Judge Joan P. Weber submitted a letter on behalf of the California Judges Association (CJA). CJA objected to the referral of “untested” complaints to a regulatory agency because transmission of information from the commission “might suggest an imprimatur which may be unjustified, especially in the case of complaints that have not been investigated in any way by the Commission.”

Judge Geoffrey Glass of the Orange County Superior Court commented that the proposed amendments allow the commission to disseminate incomplete and unsubstantiated allegations. He urged the commission to reject the amendments or, at the very least, limit it to actual violations that form the basis of discipline.

Judge John D. Conley of the Orange County Superior Court commented that unless there is a strong need to have such referrals, the proposed amendments undermine the policy of privacy around complaints against a judge. He stated that disclosure of unsubstantiated information could cause damage to a judge, especially one close to an election, even if the complaint is ultimately closed. Judge Conley also objected to the broad scope of the proposed amendment which includes any federal, state or local agency without limitation.

Judge Barbara Kronlund of the San Joaquin County Superior Court expressed her concern that the commission would be free at any time to release confidential information to essentially any regulatory agency, despite no finding having yet been made of wrongdoing by a judge. This, she stated, could result in damage to a judge’s reputation, even if the commission later concludes that the complaint was unsubstantiated.

### C. Explanation of Amendments

If the commission has reliable information that a judge has violated a law or regulation within the jurisdiction of a federal, state or local regulatory agency, it should have discretion to provide that information to the appropriate agency for the same public protection reasons it has the authority to make referrals to prosecuting authorities and the State Bar. In exercising its discretion to refer information, the commission takes into consideration the reliability of the information, the seriousness of the possible regulatory violation and whether referral is needed to protect the public and the public’s confidence in the administration of justice. In consideration of comments submitted and to assure the public and the judiciary that the exercise of discretion is not arbitrary, the proposed amendment was modified to add that information may be released *in the interest of justice, to protect the public or to maintain public confidence in the administration of justice.*

The comments received focused primarily on concerns regarding referral of information to a regulatory agency *at any time* and without substantiation of the information. To address this concern, the commission modified the proposed amendment to delete “at any time,” and instead provide that information may be released *provided the commission has commenced a preliminary investigation.* A preliminary investigation is the higher of two levels of investigation the commission may authorize and is generally authorized when the alleged conduct is more serious and substantiated.

The commission declined to limit referrals to information that results in discipline of the judge, as was suggested in some comments. Deferring referral of information to the agency until discipline has been imposed could jeopardize the agency's investigation of the alleged violation or result in the expiration of the agency's statute of limitation. At times, the commission receives a complaint about conduct that occurred a number of months or years earlier. Further, the time between the filing of a complaint and any resulting discipline can be substantial, especially because the commission often defers contacting a judge about a complaint while a matter is still pending before the judge or while the matter is on appeal. Even if the commission's investigation is not deferred, there is necessarily a lapse of time between receipt of the complaint and the commission's disposition of the complaint, while the judge responds to the allegation and is afforded other procedural rights. The commission can, of course, exercise its discretion to delay referral to an agency until the commission has completed its investigation in appropriate cases.

The amendments will not result in undue damage to a judge's reputation nor interfere with confidentiality of the commission's investigation and proceedings. If the commission makes a referral to an agency, the agency is informed that the commission has not made a determination regarding the validity of the allegation. It is then up to the agency to investigate; if the allegation is not substantiated, the judge's reputation is not tarnished. In order to address any concerns about referral of the fact that the judge is being investigated by the commission, the proposed amendment has been modified to state that in the event information is revealed, the agency *must be admonished that the fact that the commission has undertaken an investigation of the judge must remain confidential unless formal proceedings have been instituted.*

In the commission's view, the amendments to rule 102, subsections (k) and (p) appropriately balance the commission's mandate to protect the public and maintain public confidence in the integrity of the judiciary with the rights of judges to confidentiality and a fair process in commission proceedings.

## II. TEXT OF AMENDED RULES

The amendments to rule 102 are as follows (amended language is reflected in italics, deleted language is in strike-out):

**(k) (Disclosure of information to the State Bar ~~regulatory agencies upon retirement or resignation~~)** If a judge retires or resigns from office or if a subordinate judicial officer retires, resigns or is terminated from employment after a complaint is filed with the commission, or if a complaint is filed with the commission after the retirement, resignation or termination, the commission may, in the interest of justice or to maintain public confidence in the administration of justice, release information concerning the complaint, investigation and proceedings to the State Bar ~~or to other regulatory agencies~~, provided that the commission has commenced a preliminary investigation or other proceeding and the judge or subordinate judicial officer has had an

opportunity to respond to the commission's inquiry or preliminary investigation letter.

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**(p) (Disclosure of information to regulatory agencies ~~Fair Political Practices Commission~~)** The commission may *in the interest of justice, to protect the public, or to maintain public confidence in the administration of justice*, release to a federal, state or local regulatory agency ~~the Fair Political Practices Commission (FPPC)~~, at any time information which reveals a possible violation of a law or regulation within the agency's jurisdiction ~~the Political Reform Act or FPPC Regulations~~ by a judge, former judge, subordinate judicial officer or former subordinate judicial officer, *provided the commission has commenced a preliminary investigation.*

*In the event information is revealed under this subsection, the agency must be admonished that the fact that the commission has undertaken an investigation of the judge must remain confidential unless formal proceedings have been instituted.*